

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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**STATE OF MINNESOTA,**

Plaintiff,

**ORDER FOR ATTORNEY'S FEES PURSUANT TO  
MINN. R. CRIM. 28.04 SUBD. 2(6) ON STATE'S  
JANUARY 28, 2021 INTERLOCUTORY APPEAL**

vs.

**DEREK MICHAEL CHAUVIN,**

Court File No. 27-CR-20-12646

Defendant.

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This matter is before the Court on Defendant Derek Michael Chauvin's (Chauvin) motion, filed August 20, 2021 [Dk No. 597], for attorney fees pursuant to Rule 28.04 subd. 2(6) of the Minnesota Rules of Criminal Procedure in connection with an interlocutory appeal (Appeal) filed by Plaintiff State of Minnesota on January 28, 2021 [Dk No. 274] from this Court's January 11, 2021 [Dk No. 253] and January 21, 2021 [Dk No. 262] Orders severing Chauvin's trial from the trial of co-defendants Tou Thao, Court File No. 27-CR-20-12949, Thomas Lane, Court File No. 27-CR-20-12951, and J. Alexander Kueng, 27-CR-20-12953, and denying the State's December 31, 2020 motion [Dk No. 244] to continue the trial in *Chauvin* to June 7, 2020.

Matthew Frank appeared on written filings for the State. Eric Nelson appeared on written filings for the Defense. The motion was submitted to the Court on the parties' written filings, without oral argument.

The Appeal was assigned Appellate Case Number A21-0133 by the Clerk of the Minnesota Appellate Courts. On February 12, 2021, Court of Appeals filed its Order in Appellate

Case Number A21-0133 dismissing the State's appeal. [Dk No. 329] The Appeal in Appellate Case Number A21-0133 is final.

Chauvin seeks attorney's fees for the work performed by his counsel, Eric Nelson, in connection with the Appeal at the approved rate in this district, \$125/hour, set pursuant to Minn. Stat. § 611.27 subd. 16(b). Minn. R. Crim. P. 28.04 subd. 2(6) provides that “[r]easonable attorney fees and costs incurred must be allowed to the defendant on such [an interlocutory] appeal [taken by the State], and they must be paid by the governmental unit responsible for the prosecution.” For purposes of Minn. R. Crim. P. 28.04 subd. 2(6), the State of Minnesota is the governmental unit responsible for the prosecution of this case.

In support of the motion, Mr. Nelson filed an Affidavit and supporting time records itemizing 43.25 hours between January 27 and February 4, 2021 he spent reviewing relevant materials, conducting legal research, preparing briefs filed with the Court of Appeals, and other miscellaneous work related to the Appeal. *See* Aug. 19, 2021 Nelson Aff. (attached to the motion at Dk No. 597). As the time value of those hours, at the approved statutory rate of \$125/hour, exceeds the \$5,000 cap on reimbursable attorney fees in such appeals, Mr. Nelson seeks reimbursement for the \$5,000 maximum attorney fee. *See* Minn. Stat. § 611.27 subd. 16.

By letter dated August 25, 2021 [Dk No. 604], the State advised it was not objecting to the Defense request for fees in connection with the Appeal.

Based upon the foregoing, the Court finds that Chauvin's request for attorney fees in the amount of \$5,000 for the work performed in connection with the Appeal is fair and reasonable and that the State of Minnesota, as the prosecuting authority, is responsible for Defendant's attorney's fees incurred in connection with the Appeal.

Accordingly,

**IT IS ORDERED** that plaintiff State of Minnesota pay to Defendant's attorney, Eric J. Nelson, the amount of \$5,000 as reasonable attorney's fees incurred in connection with the Appeal.

**BY THE COURT:**

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Peter A. Cahill  
Judge of District Court